RHINA BHAR @ RANI RAJ PAL

v.

KARPAL SINGH A/L RAM SINGH & 2 ORS.

HIGH COURT MALAYA, PENANG
TAN SRI DATO' ANUAR BIN DATO' ZAINAL ABIDIN CJ (MALAYA)
[ELECTION PETITION NO. 1 OF 1995]
3 AUGUST 1995

ELECTION LAW: *Rule 15 Election Petition Rules 1954 - Service of election petition - Notice of petition posted on notice board of High Court - Whether requirement of r. 15 sufficiently complied with - Whether service on respondent proper.*

The petitioner presented an election petition on 23 June 1995 under s. 38(1) of the Election Offences Act 1954. Thereafter, in accordance with r. 15 of the Election Petition Rules 1954, a notice of petition was posted on the notice board of the High Court at Penang on 23 June 1995 and a copy of the notice of the petition was personally served on the respondent on 15 July 1995. The posting of the notice was within the stipulated time of 15 days under r. 15 but the personal service was outside the time for service. Rule 15 also required the petitioner to state in the notice posted that (i) such petition has been presented and (ii) a copy of the same may be obtained by the respondent on application at the office of the Registrar. From the facts, the petitioner had complied with the first requirement but had failed to show that the second requirement had been complied with. Counsel for the petitioner submitted that substantial compliance with r. 15 had been made and he urged the Court to read the word used in the notice "menyerahkan", as sufficient compliance with the rule.

The issue was whether there had been proper service on the respondent.

Held:

[1] The statutory requirements of the election law are mandatory and must be strictly observed. Where liablility is imposed by a statute which at the same time gives a special and particular remedy for enforcing it the remedy provided by the statute must be followed and it is not competent to the party to pursue another course. The form given by the statute must be adopted and adhered to.

[2] One cannot read into the word "menyerahkan" any other meaning except "to serve". It would be stretching the meaning too far to say that the word means also "boleh didapati" or "may be obtained" as stated in the rule. The petitioner has not fully complied with the requirements of the rule. As such the notice is defective and bad in law. There is therefore no proper service of the notice on the respondent.

[Petition dismissed with costs].

Cases referred to:
Tengku Korish v. Mohamed Bin Jusoh & Anor. [1970]1 MLJ 6 ***(foll)***
Wolverhampton New Waterworks Company v. Hawkesford 6 CB (N.S.) 336, 141 ER 486 ***(foll)***

Legislation referred to:
Election Offences Act, 1954, s. 38(1)
Election Petition Rules 1954, rr. 3, 10, 15

For the petitioner - Rhina Bar (Mohd. Shafee Abdullah & Hasnal with her); M/s. Shafee & Co.
For the first respondent - Karpal Singh (Jagdeep Singh Deo & S. Assamalay with him); M/s. Karpal Singh & Co.
For the Second respondent - Absent
For the third respondent - Al-Baishah bt. Hj. Abdul Manan; A.G's Chambers

JUDGMENT

Anuar bin Zainal Abidin CJ (Malaya):

Under s. 38(1) of Election Offences Act, 1954, every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the gazette.

The result for the Parliamentary Constituency of Jelutong (P.49) was gazetted on 8 June, 1995. The petitioner presented the election petition on 23 June 1995 at the High Court, Penang.

Under r. 15 of the Election Petition Rules 1954, notice of the presentation of a petition, accompanied by a copy thereof, shall, within fifteen days of the presentation of the petition, be served by the petitioner on the respondent.

Such service may be effected either by delivering the notice and a copy aforesaid to the advocate appointed by the respondent under r. 10 or by posting the same in a registered letter to the address given under r. 10, or if no advocate has been appointed, or no such address given, by notice published in the Gazette or in a newspaper circulating within the constituency or electoral ward in which the election was held, or posted on the notice board of the High Court in the State in which that constituency or electoral ward is situated.

The respondent did not avail himself of r. 10 of the Election Petitions Rules. No advocate was appointed. No address was given.

A copy of the notice of the petition was posted on the notice board of the High Court at Penang by the petitioner on 23 June, 1995.

The respondent was served personally with a copy of the notice on 15 July 1995.

The posting of the notice on the notice board of the High Court at Penang on 23 June, 1995 is within the stipulated time of 15 days as provided for under r. 15. However, the personal service on the Respondent is outside the time for service as provided under r. 15.

The question before us is whether there has been compliance with the requirement of r. 15. The relevant part of r. 15 states as follows:

> Notice of the presentation of a petition, accompanied by a copy thereof, shall, within 15 days of the presentation of the petition, be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the advocate appointed by the respondent under r. I0 or ...if no advocate has been appointed, or no such address given by a notice published in the Gazette or in a newspaper circulating within the constituency or electoral ward in which the election was held, or *posted on the notice board of the High Court in the State in which that constituency or electoral ward is situated, stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar. (The emphasis is mine).*

Rule 15 requires the petitioner to state in the notice posted on the notice board that:

1) such petition has been presented;

2) a copy of the same may be obtained by the respondent on application at the office of the Registrar.

The notice put up by the petitioner on the notice board of the High Court is substantially produced below:

NOTIS PENYAMPAIAN PETISYEN PILIHANRAYA

ADALAH dengan ini diberi notis bahawa Rhina Bhar @ Rani Raj Pal yang beralamat di No. 372, Burmah Road, 10350 Penang, Si Petisyen tersebut telah mengemukakan dengan menyerahkan di pejabat Penolong Kanan Pendaftar, Mahkamah Tinggi, Pulau Pinang, satu Petisyen Pilihanraya terhadap anda Karpal Singh a/l Ram Singh, Lim Cheak Kow dan Zulkefli Bin Hj. Kamaruzzaman, Pegawai Pengurus bagi Pilihanraya Bahagian Pilihanraya Parlimen P.49 Jelutong, Pulau Pinang berhubung dengan Pilihanraya bagi Bahagian Pilihanraya P. 49 Jelutong, Pulau Pinang.

Notis ini adalah ditampalkan di Papan Notis Mahkamah Tinggi, Pulau Pinang sebagai penyampaian kepada anda.

Bertarikh pada 23hb Jun, 1995.

Here the petitioner has complied with requirement 1. The petitioner has stated in the notice that a petition has been presented. The petitioner went on to say that the petition was presented by leaving a petition at the office of the Registrar.

This apparently is in compliance with r. 3.

The petitioner, however, has not shown that the second requirement under r. 15 has been complied with.

The learned Counsel for the petitioner submitted that substantial compliance with the requirement of the rule has been made. The learned Counsel submitted that the word "menyerahkan" is sufficient to convey to the respondent that a copy of the petition is available and may be obtained by the respondent. The petitioner of course did not use in clear words as required under the rule by stating that a copy is available and may be obtained by the respondent on application at the office of the Registrar. The learned Counsel urged the Court to read the word used i.e. "menyerahkan", as sufficient compliance with the requirement of the rule. With respect I am unable to agree with this suggestion.

With respect I am of the view that the statutory requirements of election law are mandatory and must be strictly observed (*Tengku Korish v. Mohamed Bin Jusoh & Anor.* [1970] 1 MLJ 6). Where a liability is imposed by a statute which at the same time gives a special and particular remedy for enforcing it the remedy provided by the statute must be followed and it is not competent to the party to pursue another course. The form given by the statute must be adopted and adhered to (*Wolverhampton New Waterworks Company v. Hawkesford* 6 CB (N.S.) 336, 141, ER 486).

With respect I cannot see how one can read into the word "menyerahkan" any other meaning except "to serve". It would be stretching the meaning too far to say that the word means also "boleh didapati" or "may be obtained" as stated in the rule. In the result I do not think the petitioner has fully complied with the requirements of the rule.

I am of the view that the words used in the notice put on the Notice Board of the High Court at Penang do not sufficiently comply with the requirement of r. 15. As such the notice is defective and bad in law. There is therefore no proper service of the notice on the respondent.

For the above reasons I would dismiss this petition with costs.